

Subject: Response to European Commission (EC) letter of 7 January 2014 – SA.36401 (2013/CP)

1. Introduction

1.1. Thank you for your letter of 7.1.14. The UK Authorities welcome the opportunity to respond to your questions and provide further information and justifications for the decision the Stadium stakeholders have taken. []

1.2. We trust the EC appreciates that the London Legacy Development Corporation (LLDC), the owner of the Stadium and wider Queen Elizabeth Olympic Park areas, has already submitted a significant amount of information to the EC to describe and justify the decision to develop the Stadium as a multi-function/multi-use facility using public funds, and appoint West Ham United FC (WHUFC) as the main tenant/concessionaire after a fair and open competitive process advertised in the Financial Times (international edition) and The Economist.

1.3. Our response is structured as follows:

- Executive Summary
- General remarks
- Comments on the annexes to EC's letter (question 1);
- Responses to questions 2, 3 and 4
- Conclusions

2. Executive Summary

2.1. The UK Authorities continue to take the view that (i) the business cases on the basis of which the public investment for the transformation of the Stadium was provided, justify both the investment and the choice of delivering the Stadium as a multi-functional/multi-use venue to be operated under market economy principles; and (ii) the competitive process that was followed for the main tenant/concessionaire, confirm that LLDC¹ has been acting as a private market economy operator would have acted under the same or similar circumstances.

2.2. [] WHUFC (i) is not the sole or exclusive user of the transformed Stadium; (ii) makes a significant contribution to its costs, which (a) support and justify its transformation as a multi-functional/multi-use venue and (b) meets the costs of WHUFC's use of it.

2.3. LLDC has agreed a fully commercial deal with WHUFC which provided the best value available in the market. []. We attach a more precise list of the benefits LLDC has extracted from WHUFC (Annex 1). To summarise:

- WHUFC makes a contribution of £[]m² to the capital costs of the Stadium transformation;
- WHUFC pays a Usage Fee³ of £[]m per annum⁴, which covers the annual event costs associated with their use and it is subject to RPI;
- E20 LLP has a share in WHUFC event/match-day catering revenue as follows: the first £[]m⁵ of catering revenue goes to E20 LLP; any amount above that level is split [] in E20 LLP's favour and it is subject to RPI;
- E20 LLP gains a significant uplift in the value of the Stadium's naming rights⁶ from the presence of WHUFC (elite football). LLDC has analysed and benchmarked the revenue from the sale of naming rights to the Stadium in collaboration with Price Waterhouse Coopers (PwC) and Sport+Markt (a dedicated sponsorship and naming rights agency) who both value the uplift associated with WHUFC being a user of the Stadium at around £m per annum;

¹ LLDC has been acting for E20 Stadium LLP (E20 LLP), the public owners of the Stadium. E20 LLP is a public partnership between LLDC and the London Borough of Newham (LBN). LLDC has been granted E20 LLP a long-lease over the Stadium island site on the Queen Elizabeth Olympic Park.

² In 2015 prices – the majority of the transformation works will be completed in 2015.

³ Please note that additional (Performance related) payments have also been agreed, should WHUFC finish in any position above [] in the Premier League, wins the FA or League Cup, qualifies for the Europa or Champions League or wins either competition.

⁴ This is in 2016 prices – WHUFC tenancy starts in the summer of 2016.

⁵ The average spend per spectator assumptions reflect sector benchmarks.

⁶ Under the agreement with WHUFC, E20 LLP will receive the income for the sale of the Stadium naming rights up to £[]m; if the income exceeds £[]m, the incremental amount will be shared on [] basis with WHUFC.

- The net contribution from WHUFC's use of the Stadium (in 2012 prices) is £m per annum, which in turn is a Net Present Value contribution over the 99 year term of the WHUFC agreement of £[]m. The NPV calculation is based on HM Treasury guidance and is fully compliant with their methodology;
 - These payments relate to WHUFC's use of the Stadium which totals [] days per year ([] event days and one day either side for preparation and removal of any event overlay);
 - LLDC negotiated (on the advice of Rothschild) a Threshold Amount payment. This means that, should the current owners and majority shareholders of WHUFC sell the club within [] years of their relocation to the Stadium for an amount above its current valuation, E20 LLP will receive a share of that increase in value over a certain threshold; and
 - There are significant community benefits arising from WHUFC's use of the Stadium including up to 100,000 tickets per annum, which are offered for free.
- 2.4. These financial terms, when taken together over the 99-year term of the WHUFC Concession Agreement, ensure that the deal in the round is value for money; covers all event day costs associated with WHUFC's use; contributes towards the operational and maintenance costs of the Stadium; supports the operation of the Stadium as a multi-use/multifunctional venue; aims to provide a return to E20 LLP; and meets the relevant State aid guidelines.
- 2.5. WHUFC contributes proportionately more of the total revenue to the E20 LLP than the number of days it uses the Stadium:
- WHUFC contributes []% of total estimated income to E20 LLP;
 - WHUFC's usage accounts for []% of the total availability ([] event days, plus [] days set up and set down i.e. [] in total);
 - WHUFC's net contribution (i.e. total estimated income less event day costs) contributes []% towards the Stadium overhead costs.
- 2.6. The UK Authorities therefore believe that (a) LLDC has acted as a private market economy investor would have acted, if they were the owners of the Stadium in 2011/2012, and (b) WHUFC pay a fair price/market rate for their use of the Stadium and make an overall contribution to its operating and transformation costs, which is overall proportional to their use.

3. General remarks

Background to the UK Authorities decision to fund the Stadium's transformation

- 3.1. Securing a viable, sustainable solution for the legacy use of the Stadium has been a priority project for LLDC since its inception as the Olympic Park Legacy Company (OPLC) in May 2009. In October 2011 the UK Government and the Mayor of London made a public commitment to retain the athletics track in the Stadium and deliver a public sector-led solution to the future of the Stadium.
- 3.2. In December 2011, OPLC submitted an Outline Business Case (OBC) to central government requesting approval of the 'enhanced multi-use Stadium' (one of five options but the most economic) as the preferred legacy option as offering the best business case and value for money future for the Stadium. This would provide a permanent capacity of up to 60,000 seats, enhanced hospitality provision, retention of the athletics track, a full roof covering all seats and a community athletics facility including 400m track to the south of the Stadium. Despite the higher investment required, it had the lowest Net Present Cost (NPC), at £[]m over [] years, of the options which retain a viable, long-term Stadium. It was the only option under which the Stadium operates at a revenue surplus – some £[]m a year on the basis of the then assumed transformation cost. Under the "Do Nothing" option, the UK taxpayer would have to incur around £2 million per year to keep the Stadium open.
- 3.3. HM Treasury approved the OBC and subsequently OPLC launched a competition in December 2011 to identify an anchor concessionaire(s) for the Stadium; that competition was, as noted elsewhere in this paper, launched through an advertisement in the Financial Times (International Edition) and The Economist. A Full Business Case (FBC) was approved in March 2013, after the review of the results of the competitive process, which formed the basis of LLDC signing the Concession Agreement with WHUFC.
- 3.4. The UK Authorities continue to be of the view that the arrangements for the transformation and future use of the Stadium are based on robust business cases which have been reviewed and approved by the public funders of the project. Both the OBC and FBC were compliant with the 'Green Book Appraisal' methodology set by HM Treasury for public financing of projects.
- 3.5. It is within the privilege of the Member State to decide the infrastructure they want/need to provide within their territory, as long as the delivery of the infrastructure complies with the relevant domestic and EU legislation including on public procurement and State aid.

Proper and widely advertised competitive processes

- 3.6. As stated above OPLC launched a competition seeking users of the Stadium on 20 December 2011, through international advertisements as stated above. At all times

the Contracting Authority aimed to ensure the greatest possible market interest in the opportunity and future use of the Stadium, and to meet the relevant EU law principles on fairness, transparency and non-discrimination.

- 3.7. Winning the bid for the Stadium to host the IAAF World Athletics Championships and IPC World Athletics Championships in 2017 (the 'WAC' and 'IPC' respectively) provided a significant boost to the future of the Stadium and clarity on the capacity and scope to which it must be transformed post-Games.
- 3.8. A key condition in the procurement process (reflecting the OBC) was that the rental payment by a party granted a concession should, as a minimum, cover the event day(s) costs associated with their use without further public financial support and contribute towards the ongoing operating costs of the Stadium. That was a hard but necessary test to avoid the Stadium requiring operating aid to remain open for use. In order to achieve that, the Stadium ought to be run commercially in accordance with private market principles and standards.
- 3.9. The competition was structured in order to maximise the possibility of having a number of concession holders by having a ranking system whereby as long as a suitable commercial business case for use could be made, and event calendars matched, any number of bidders could be granted a concession for use of the Stadium. This was designed to ensure the Stadium met the overarching objective of hosting a wide range of sporting, cultural and community activities to contribute to the regeneration of the East London area. These facts therefore confirm that the public funding was aiming to deliver a multi-functional/multi-use venue not for the sole benefit of one party.
- 3.10. The moment a Contracting Authority advertises so widely for a particular opportunity they have no means to know or forecast who will express an interest in it; the aim is to ensure both wide-ranging interest and also compliant, financially viable bids from the market. Indeed there was hope expressed in the OBC that football clubs would participate in the process and bid for a concession, but still there was no certainty.
- 3.11. Ultimately LLDC received four (4) compliant tenders (two (2) of which were from football clubs (WHUFC and Leyton Orient FC (LOFC)). The Supplementary Paper that the UK Authorities submitted to the Commission on 9 April 2013 provides detailed information on the bidders and the evaluation of the tenders and the outcomes of the evaluation.
- 3.12. When LOFC decided to challenge LLDC in the High Court in September 2013 on the process by means of a judicial review (not a review on merits but on process) the High Court dismissed their application because the Court was satisfied that LLDC ran a fair, open and transparent competition and rejected all LOFC's arguments (see

judgement attached as **Annex 2**). That can only be an unequivocal confirmation of the robustness of the process that was followed. []

- 3.13. LLDC has further undertaken a significant amount of analysis on the business planning implications flowing from the competition, any capital cost requirements of bidders and the wider economic benefits of the preferred solution. One naturally flows from the other; the best revenue position is reached by having a professional sports club, in particular a football club, use the Stadium, but this requires significant capital investment by the public sector.
- 3.14. A lower capital cost would not have met the requirements of elite level football and international sports, the requirements of the terms of the 2017 WAC and IPC agreements, nor would it maximise the type and number of other potential uses such as concerts and conferencing and banqueting, and would have led to an ongoing public subsidy on an annual basis. The strategic case for the preferred option in the OBC and FBC was underpinned by the fact that having run two separate competitions (as the EC knows already) to determine the future for the Stadium, there has been no financially viable bid from any party not requiring significant capital works to the Stadium with ongoing use of the field of play, a capacity of c. 60,000 and significant hospitality arrangements.
- 3.15. The selection of a football club as an anchor tenant/concessionaire for the Stadium has some consequences on top of the LLDC agreement with IAAF for the 2017 WAC and IPC. For football to be played in the Stadium during the winter months certain licensing requirements need to be met, including relevant local authority safety regulations (for example all seats within the Stadium must be covered by a roof – this has particular relevance as a condition of both the WHUFC and LOFC bids was proximity of the front row of the lower bowl seating to the field of play) and relevant Premier League and Football Association guidelines. By providing retractable seating and full roof coverage of the seats, the Stadium now has significant capability for hosting a number of winter and summer sports and events, as evidenced by the fact it is hosting elite level athletics, matches during the 2015 Rugby World Cup and has additional events in the pipeline and subject to confirmation. The above considerations were addressed at length by the FBC.
- 3.16. We explained in our response to the EC of 2 May 2013 and paragraph 15 and 16 of the Supplementary Paper of 9 April 2013, the rationale behind the seating and the roofing decisions. It is important also to note that the seating and roofing solution that has flowed from the competitive process (and considered in the OBC Enhanced Option) enables the Stadium to host winter sports; on that basis LLDC has successfully secured five (5) games of the Rugby World Cup in September/October 2015; the public owners of the Stadium are hopeful that because of this specification the Stadium will attract more winter sports, which will consequently

provide more revenue to amortise the public investment under the Enhanced Option.

Update on the procurement of the Stadium transformation works and Operator

- 3.17. LLDC has now awarded all relevant contracts necessary for the transformation of the Stadium (except the design and fit-out of the Stadium hospitality areas) following a number of robust procurement processes all of which were advertised in the OJEU.
- 3.18. As significant, LLDC has also launched the public procurement process for an operator of the Stadium as a service concession, with the publication of a Contract Notice in the OJEU and a subsequent direct email notice to a number of potential candidates based in the US and elsewhere. The launch of the formal procurement process was preceded by a soft market testing exercise which was advertised in the OJEU through a PIN and with advertisements in the Financial Times.
- 3.19. The Stadium operator will be under clear general instructions by the Stadium's public owners to maximise the utilisation of the Stadium, charge market rates for its use by professional users (but not necessarily for community and other non-professional users) and generate a significant commercial return.
- 3.20. Furthermore, it will be in their own interest, as a service concessionaire operating at risk, not to undersell the use of the Stadium to professional users. The terms of the competition, and clear conclusions from the soft market testing, is that LLDC will expect to share in the profits generated by the operator's activity at the Stadium to be used to repay the capital costs of its transformation.
- 3.21. LLDC continues therefore to meet the EC guidelines on Stadia in respect of the selection of the main (long term) users, the Stadium transformation contracts, the Stadium operator contract and charging professional users a market rate for their use of the Stadium. The public owners of the Stadium continue to be committed to provide the Stadium as a multi-functional/multi-use venue in accordance with the EC guidelines.

No selective advantage through the competitive process

- 3.22. In light of the above, the UK authorities do not dispute the involvement of public funding in the transformation of the Stadium. However, they disagree that the funding provides a selective advantage to WHUFC, which, albeit the anchor tenant/concessionaire of the Stadium (for all home games during the football season (early August – early May)), is only one of the existing and future users of the Stadium. In simple terms: **the Stadium is being transformed with WHUFC (and other winter sports, including their relevant licencing and governing body requirements) in mind but not for WHUFC alone.**

- 3.23. In fact, the final transformation design of the Stadium, while in part resulting from the requirements of the football club bidders in the competition, has actually enhanced the attractiveness of the venue to other users, as evidenced by the acquisition of the five games during the 2015 Rugby World Cup (RWC 2015).
- 3.24. It is important for the EC to appreciate that WHUFC is not the exclusive user of the Stadium. UKA, the RWC 2015 and the other current users (as per Annex 2 of the Supplementary Paper) leave no doubt about this.
- 3.25. At this juncture it is also worth noting that LLDC has received a number of high-profile requests for the use of the Stadium in its transformed state. These include professional sports franchises from the USA, concert promoters and other parties wishing to take advantage of the flexible multi-use nature of the venue. In addition, LLDC responded positively to a fresh approach by LOFC (please see **Annex 3** for relevant press clippings) seeking access to the Stadium; LLDC has suggested to LOFC that they can approach the Stadium operator when it is in place and submit their proposals to them, subject to any public process that the operator needs to conduct to assess and agree terms of use for any long term users on the basis of market rates prevailing at the time.
- 3.26. It is also worth noting that, unlike many of the recent football stadia cases the EC has dealt with, WHUFC has not previously been the user or operator of the publicly financed and transformed Stadium, and they have not participated in the Stadium operator competitive process so far. The previous occupancy and/or operation of the stadia engaged in the abovementioned EC cases naturally raises the risk that the public financing of these stadia would benefit the resident football clubs – a distinction therefore needs to be drawn between this case and the other EC cases.
- 3.27. The Stadium was not a football stadium before its transformation and it is publicly financed specifically to become a multi-function/multi-use venue with a football club as an anchor tenant/concessionaire on the basis that the Stadium costs will be repaid by its users.
- 3.28. None of the above suggests to the UK Authorities that the publicly funded transformation of the Stadium provides a selective advantage to an undertaking for the purposes of Article 107(1) TFEU or falls short of the guidelines of the EC in this area, as reflected in its relevant case law.
- 3.29. In our view the EC will need to consider drawing a distinction between this case and a number of their cases which involved football stadia public financing where those stadia had a football club as the main user with no significant other users (the football stadia in Germany for the 2006 FIFA World Cup, the Dutch municipalities, the recent German stadia of Jena, Erfurt, Chemnitz and the French Stadia for EURO 2016 cases, etc.).

3.30. Finally, the selection of the anchor tenant/concessionaire through the public process described above must cast serious doubts on the applicability of the selectivity criterion in this instance. []; there was no barrier to entry based on location or type of organisation; if other clubs seeking a larger stadium chose not to enter the competition because of concerns over geographical location then that is a decision for them and a feature of the London football clubs market, not evidence of selective economic advantage. The location of the Stadium is fixed and all parties were aware of this prior to placing bids.

Effect on competition

3.31. Similarly, the UK Authorities maintain serious doubts as to the harm on competition in this instance given the competitive procurement process which has been followed for the appointment of the anchor tenant/concessionaire. Our doubts are further reinforced by the absence of any State aid complaints about distortion of competition by any UK or European football clubs (see also paragraphs 4.28 – 4.39 below).

3.32. Every football club in the wider London area which had ambitions to move to a bigger ground could have used the opportunity provided by the LLDC competition to review the relevant conditions and award criteria and express an interest, or team with another football club and submit a joint tender, if they could not meet the requirements of the process as a single party. By submitting a bid to the competition, WHUFC evidently saw the opportunity to increase their attendance and revenues; if no club other than LOFC came to a similar conclusion, then that is a matter for the London football club market, not evidence of any harm to competition.

3.33. In any event before considering any effect on competition the EC would need to consider the relevant economic market. A recent UK Competition Commission investigation into Arenas (closed venues) in London was not able to establish a narrow market and left the point open suggesting that the competition between venues could be wider both in service and geographic terms (see link: <http://www.competition-commission.org.uk/our-work/directory-of-all-inquiries/aeg-wembley-arena>).

3.34. That being said, the UK Authorities do not believe that the conditions of Article 107(1) TFEU are met in this instance.

4. Comments on the information submitted by the Complainant

[]

5. Response to the individual questions of the EC

Second EC Question: Was WHUFC the only “possible” winner of the tender?

- 5.1. Our answer to this question is that WHUFC was not the only “possible” winner of the tender. We have described above that OPLC/LLDC had chosen to run a competitive procurement process to select the anchor tenant/concessionaire of the Stadium.
- 5.2. The EC accepts that a competitive process is an appropriate and recommended route to market due to the potential public interest results the competition can provide to the public vendors/purchasers.
- 5.3. [] the process was open, fair and non-discriminatory and the High Court rejected LOFC’s application for a judicial review of aspects of the competitive process, which confirms the robustness of the process.
- 5.4. It is the nature of such public competitive process that one cannot know in advance which economic operators would participate in it or which will submit the most economically advantageous tender; the only obligation on the procuring public body is to ensure that the competitive process is fair, transparent and open to all and its rules and requirements are transparent and do not favour a specific bidder. The OBC and the High Court, in dismissing LOFC’s judicial review application, provide support of this.
- 5.5. The only way of neutralising the accusation that WHUFC’s proximity to the Stadium gives them an unfair advantage would be either to preclude WHUFC from the competition (that would be illegal) or to move the Stadium elsewhere (that would be unrealistic).
- 5.6. As mentioned above the process had an in-built teaming stage after the ranking of the bidders. That also facilitated the possibility of more than one bidder being granted a concession agreement if their financial proposals were viable and their timetables for use of the Stadium were compatible.

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Third EC Question: Did the [competitive] tender process guarantee a market price?

- 5.8. The answer to this question is that the public owners of the Stadium and its public funders have extracted from the competitive process the best available offer for the Stadium anchor/tenant concessionaire.
- 5.9. The UK Authorities continue to suggest that LLDC has acted in the same way that a private owner of the Stadium and the surrounding areas would have acted to deliver a Stadium as a multi-functional /multi-use venue that covers its operating costs and receives a significant contribution towards the capital investment made in

it; in contracting with WHUFC LLDC has struck a deal which significantly contributes to this double objective.

5.10. LLDC, advised by PwC, Allen & Overy and Rothchild, was keen, throughout the process, to extract maximum value from any party to be appointed as anchor tenant/ concessionaire on the basis of the use required.

5.11. The list of benefits (**Annex 1**) that the public owners extracted from WHUFC through the process must be evidence of a proper commercial arrangement.

Fourth EC Question (Additional information demonstrating that that WHUFC pays a market price (both as regards the construction/rebuilding costs and the lease concession).

Do WHUFC pay for the operating costs of their use?

5.12. The Stadium operating costs include: Lifecycle costs, Overheads and event/match day(s) costs. Covering the cost of use (Event day(s) cost) was one of the most important criteria in the competitive process.

5.13. WHUFC agreed to pay an annual Usage Fee of £ []million (subject to RPI) for their use of the Stadium, which covers the annual event/match day(s) costs of their use (event/match day(s) (a total of three days)) for [] home games.

5.14. The level of the rental/usage fee was negotiated on the basis of advice and support from PwC. The original offer made by WHUFC i.e. £[] million was analysed to ascertain whether it represented a market rate and if not, what a more realistic level of payment would be. Since it did not even cover the event/match day(s) costs for [] matches a year, it was quickly concluded that it was insufficient. LLDC was successful in extracting £ [] million during the negotiation stage. The Usage fee is just one element of the total payment. Other income which directly relates to WHUFC's use of the Stadium includes the uplift in the naming rights value, other Stadium sponsorship and a share of the catering income from football matches. In negotiating with WHUFC, LLDC sought to secure incremental income either directly from WHUFC or directly as a result of their usage which would cover the event/match day(s) costs and make a significant contribution to the overhead costs.

5.15. It should be noted that analysing market rate (NB not market price) in this case is a complex process and depends on a number of factors, including:

- who is covering event costs;
- how other revenues (e.g. catering, naming rights) are shared;
- success on the field (e.g. which division the club is playing in);
- exclusivity of use;

- capital contributions by the club to any transformation/construction costs; and
 - to an extent, the level of rent/fee paid by clubs in a similar arrangement.
- 5.16. It should also be noted that in respect of the final point, comparisons with other clubs are neither definitive nor straightforward as arrangements between a 'tenant' or user of a facility and the owner differ considerably based on location, site usage, match-day revenues and other factors.
- 5.17. LLDC analysed the following rates paid by professional English football clubs in assessing the market rate to be paid by both football clubs that entered the competition:
- Manchester City's payments as part of their deal at the City of Manchester stadium (now The Etihad);
 - Coventry City's payments for use of the Ricoh Arena (Coventry City have now moved out of the stadium due to financial difficulties);
 - Crystal Palace, who plays at Selhurst Park and who, until recently, did not own the stadium.
- 5.18. The arrangements between venues, such as Wembley and Millennium Stadium, and their users were also considered, given that these are longer term staging agreements which provide access for specific matches and therefore are comparable with E20's arrangements with WHUFC. In the case of Wembley, the payment from the event promoter is on the basis of a share of ticket revenue. All other revenue is typically retained by the venue.
- 5.19. In assessing the payments paid by other football clubs, and as noted above, a number of factors were taken into consideration to ensure a fair and useful comparison was made.
- 5.20. Ultimately, LLDC succeeded, with the support of their advisers, to extract a rental payment from WHUFC that covers comfortably their event/match day(s) costs and provides a significant contribution to the overhead costs of the Stadium.
- 5.21. In summary, the usage fee, plus income directly associated with WHUFC's usage of the Stadium contributes []% of estimated total income and covers []% of the overhead cost, after payment of event/match day(s) costs. This is achieved despite WHUFC only taking []% of the available days in the annual event calendar.
- Do WHUFC pay for the transformation costs of Stadium considering their use?*
- 5.22. As stated above, the overall monetary contributions by WHUFC includes:
- The £[]million one-off contribution to the capital costs of the Stadium transformation;

- The £[]m per annum Usage Fee⁷ (subject to RPI);
- The E20 LLP share⁸ of WHUFC's event/match-day(s) catering revenue which is estimated to be around £[]m per annum;
- The E20 LLP benefit⁹ from the significant uplift in the value of the Stadium's naming rights from the presence of WHUFC (elite football) which amounts to around £[]m per annum;
- The E20 LLP benefit from stadium sponsorship revenue which is unlikely to be achieved without the presence of WHUFC.

These financial terms, when taken together over the term of the 99-year terms of the WHUFC Concession Agreement, ensure that the deal in the round is value for money; meets EC guidelines/case law on the absence of aid; covers all event day costs associated with WHUFC's use; contributes towards the operational and maintenance costs of the Stadium; maintains the Stadium as a multi-function/multi-use venue and aims to provide a return to E20 LLP;

6. Conclusions

6.1. In light of the above, the UK Authorities continue to believe that the public investment in the transformation of the Stadium in a multi-function/multi-use venue does not involve State aid for the purposes of Article 107(1) TFEU on the basis that:

- LLDC has acted as a private market economy investor would have acted, if they were the owners of the Stadium in 2011 and the surrounding areas;
- A fair and open competitive process was implemented to appoint WHUFC as the anchor tenant/concessionaire; and
- WHUFC pay a fair price/market rate for their use of the Stadium and make a significant contribution to its transformation costs, which is overall proportionate to their use.

⁷ See footnote 3.

⁸ Calculated as follows: the first £[]m of general admission catering revenue goes to E20 LLP; any amount above that level is split [] in E20 LLP's favour and it is subject to RPI;

⁹ LLDC has analysed and benchmarked the revenue from the sale of naming rights to the Stadium in collaboration with PwC and Sport+Markt (a dedicated sponsorship and naming rights agency) who both value the uplift associated with WHUFC being a user of the Stadium at circa £[]m per annum; this is subject to RPI.

ANNEX 1

List of benefits extracted from WHUFC

Commercial item	Benefits
Usage Fee	<p>£[]m per annum in Premier League - linked to RPI.</p> <p>£[]m in a lower league - linked to RPI.</p>
Capital contribution	£[]m contribution on sale of Boleyn Ground, guaranteed by majority shareholders.
Threshold Amount payment (value claw back arrangement)	Should the current owners and majority shareholders of WHUFC sell the club (or their shares and any that are currently under option to purchase) within years of the WHUFC relocation to the Stadium for an amount above its current valuation, E20 LLP will receive a share of that increase in value over a certain threshold. The full mechanism is set out in the Concession Agreement and referred to as the Threshold Amount.
Additional payments	£[]m per competitive match over the set number of games and operating costs for u-21/academy matches -linked to RPI
Performance related payments	Payments potentially worth up to £[]m extra p.a. if WHUFC finish in any position above 10th in the Premier League, wins the FA or League Cup, qualifies for the Europa or Champions League or wins either competition (not included in the above calculations of the WHUFC contributions)
Stadium Naming Rights	<p>First £[]m kept by LLDC, anything above this split with WHU with their share capped at their annual Usage Fee unless clearly attributable to their on-field performance (e.g. bonus payments for European football).</p> <p>Collaborative working agreed to ensure that the value of the package is maximised.</p>
WHUFC match/event day Catering revenue	<p>LLDC retains first £[]m of catering revenue with remainder split with WHU in LLDC's favour - linked to RPI</p> <p>WHU retain all VIP/hospitality revenue for their events, although LLDC will take a slice by virtue of the contract it agrees with a catering contractor.</p>

Associated benefits	<p>E20 receives any income from Stadium sponsorship, which could include stand naming rights, stadium partners (e.g. exclusive supply arrangements); no revenue is expected from this source if there is no football club concessionaire – estimated around £m per annum.</p> <p>WHUFC’s presence is likely to make the Stadium more attractive for a range of other users, such as non-match day pitch hire, conference and banqueting and Stadium tours. This income is directly payable to E20.</p>
Community	Up to 100,000 complimentary tickets made available for free to Community access to WHUFC home games.

ANNEX 2

High Court judgements rejecting LOFC Judicial Review Application

(See separate word document attached)

ANNEX 3

Sample of press cuttings relating to LOFC's fresh approach to LLDC and LLDC response

<http://www.telegraph.co.uk/sport/football/teams/leyton-orient/10526739/Leyton-Orient-could-share-Olympic-Stadium-with-West-Ham-as-Barry-Hearn-is-cleared-to-strike-rental-deal.html>

Orient back in the running for Olympic Stadium

By Ben Rumsby

West Ham United may yet be forced to share the Olympic Stadium with Leyton Orient after Barry Hearn was given permission to use the venue by legacy chiefs.

The London Legacy Development Corporation confirmed last night that it had no objection to Orient chairman Hearn negotiating a rental agreement with whichever firm ends up operating the London 2012 centrepiece, something that could lead to the club playing all of their home games there.

The revelation followed a meeting between the LLDC and Hearn, set up after last month's House of Lords report into the Olympic legacy, which recommended that Orient be allowed "occasional use" of the stadium.

The LLDC reiterated that there was no prospect of West Ham's sole-anchor tenancy being challenged but told Hearn that there was nothing to stop him striking a deal for Orient to play at the venue when it is not being used by their local rivals.

The right to manage the stadium during those periods will be put out to tender next year, with Live Nation and AEG likely to be among the bidders. The winner will be charged by the LLDC with cking the maximum possible revenue out of the arena during a contract expected to span between 10 and 20 years.

It will not be able to offer Orient a long-term lease such as the 99-year agreement enjoyed by West Ham but should have the power to grant permission for them to play an entire season at the venue, perhaps several.

Confirming the outcome of the meeting last week, Hearn said: "West Ham won't want to hear this but the news that came down is they have no problem with me renting the Olympic Stadium and playing fixtures there. It's only a question of what rental I agree with the new operators. That's a major breakthrough for me."

Hearn claimed that Orient using the stadium every other weekend would be attractive to whoever manages it because it would provide regular guaranteed income that a music concert or one-off event could not.

It remains to be seen if the new

stadium operator will agree with that assessment. "They'll realise that there is nothing else to go in there during the football season," Hearn said.

Hearn, who has lost every legal challenge to the LLDC's refusal to sanction a permanent groundshare, had offered to pay £500,000-a-year rent, double were Orient promoted from League One.

Revealing that he would ask the new operator to name its price, he said: "If they ask me for £1million per game, I'm not going to move in. But, when push comes to shove, to recoup fixed costs - even partial fixed costs - it is better than having an empty stadium as far as the taxpayer is concerned. If they quote something ridiculous, I will hang them out to dry, in terms of, 'This is a community club and you're trying to take liberties'."

Hearn's previous plan was to sell Orient's Brisbane Road home if they moved into the Olympic Stadium but he admitted that would now depend the length of any deal on the table.

An LLDC spokesman said: "We will appoint an organisation next autumn to manage, maintain and operate the stadium and programme activities and events. Leyton Orient are [then] free, as are anyone, to approach the operator to discuss using it."

West Ham declined to comment.



Ground for complaint: Orient may yet be able to rent the stadium